

Date of decision: 5-12-1995

For Approval and Signature

The Hon'ble Mr. Justice

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Mr. K.G. Vakharia for the petitioner

Coram: S. K. KESHOTE,J
(5-12-1995)

ORAL JUDGMENT:

Having heard the learned counsel for the parties, I do not find any substance in the revision petition.

2. It is a case of double subletting. The learned first appellate court, after considering evidence - both oral as well as documentary, has recorded finding of fact that in fact the landlords were duped by the tenant by keeping the same name of the firm and thereby successfully suppressed unlawful subletting or transfer of the suit premises to the new firm of M/s. Kishanlal Manoharlal. There is also concurrent finding of fact on subletting of the premises to defendant No.2. The courts below recorded the finding of fact that possession of the suit premises has been given to defendant No.2. It has also been found by both the courts below that defendant No.2 is carrying on business in the suit premises. Partnership deed of defendant No.2 at Exh.150 is produced by the said party which gives out the address of the firm as of the shop in dispute. This document is a strong evidence to prove that the firm of defendant No.2 started their new business in the suit premises in the year 1970. Learned counsel for the petitioner has placed much stress on the point that defendant No.2 has owned a shop at Sindhi Market, Ravadi Bazar, Ahmedabad, which is far away from the suit premises and as such the Courts below have committed a serious illegality in believing the subletting in his favour. I fail to see any merit in this submission for two reasons. Firstly, merely because defendant No.2 has another shop it cannot be presumed that there was no subletting. To expand his business, defendant No.2 would have all the rights to take another shop. There is no evidence on the record to show that the shop, reference to which has been made above was hired by defendant No.2 prior to subletting of the suit-shop. The rent receipts and the monthly tax receipts produced by the defendants of that shop are for the period subsequent to the period 1973-74, whereas the present suit has been filed on 7-2-1974. Taking into consideration all

the facts and circumstances of the case, it is a case where the plaintiff has been able to establish the case of subletting of the suit premises to defendant No.2.

3. Learned counsel for the petitioner has raised another contention that the principal tenant has not been impleaded as party to the suit and as such the suit should have been dismissed by the trial court for non-joinder of the necessary party. This point has been raised by the defendant petitioner before the first appellate court also and the court has, after considering all the aspects of the matter, held that the suit is legally maintainable. This objection was taken by the defendant in the trial court. After this objection was raised, the plaintiff has taken all the care and he immediately filed application Exh.122 in which he stated that the summons issued by the Court to defendant No.1 was accepted by one Kishanlal Ramchand and the written statement Exh.16 filed by defendant No.1 is signed by Shri Manoharlal R. Sajwani. It is further stated by the plaintiff in the application that Kishanlal Ramchand is not a partner of the tenant-firm, and Shri Manoharlal Sajwani also is not a partner of the tenant-firm. After giving these facts he prayed that the summons be reissued and it may be served to the real partner Shri Ramchand Gangaram. The trial court, after hearing both the sides on this application issued fresh summons to the firm which was served on Shri Ramchand Gangaram. Shri Ramchand Gangaram appeared in the trial court and he filed written statement Exh.135. In the written statement he has taken the stand that he was never a partner of the firm, and had nothing to do with the firm. He prayed for dismissal of the suit against him. The matter does not rest here. The plaintiff had further filed pursis Exh.129 in the trial court and stated that his suit is against the firm of M/s.Kishanlal Manoharlal as shown in the partnership deed dated 14-3-1963. It is not in dispute that the tenant firm was constituted under the partnership deed dated 14-3-1963. After taking into consideration all these facts the learned trial court has rightly held that these are sufficient to prove that the plaintiff has joined the old firm (head tenant) in the suit as defendant and which finding has been affirmed by the first appellate court. I do not find any perversity in the findings of the courts below.

4. Other two contentions were sought to be raised by the learned counsel for the petitioner. The first contention raised is that the plaintiff is residing in the same house where the suit shop is situated and though the first subletting had taken place in the year 1963 but the suit had been filed in the year 1974. Having knowledge of subletting he allowed the firm to remain there and accepted the rent

and as such waiver and acquiescence attracted and it is not open to him to seek decree for eviction on the ground of subletting. I do not find any substance in the contention for two reasons. Firstly no such ground has been raised by the learned counsel for the defendant petitioner in the first appellate court. Secondly the plaintiff has come up with the case that he has come to know about subletting for the first time in December, 1973. This finding of fact which has been recorded by the first appellate court could not be successfully challenged by the counsel for the defendant petitioner before this Court. Apart from this, even if the first subletting goes on the aforesaid ground then also on this ground alone the decree of the courts below cannot be reversed as the second subletting to defendant No. 2 has been held proved by both the courts below, which finding has already been confirmed by me above.

5. In the result the revision petition fails and the same is dismissed. Rule discharged. Ad-interim stay order passed by this court on 16-7-1982 stands automatically vacated.

6. At this stage the learned counsel for the petitioner prays that some time may be granted to the defendant to vacate the premises as it is very difficult to arrange for suitable premises in Ahmedabad City. Taking into consideration all the facts and circumstances of the case, three months' time is granted to the petitioner to hand over vacant possession of the suit premises to the plaintiff-respondents, subject to the condition that (i) the defendant shall hand over vacant possession of the shop in dispute to the landlord respondents on or before 4th March, 1996; and (ii) the defendant petitioner shall make payment of all the arrears of mesne profits till today, within a period of fifteen days from today and shall continue to pay or deposit the monthly amount of mesne profit till 4th March, 1996. If any of the aforesaid conditions is breached, then the decree shall become automatically executable without reference to this Court.

.....